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INTRODUCTION

In accordance with the City Auditor's 1997-98 Audit Workplan, we have audited the Multiple Housing Roster maintained by the Code Enforcement Division of the Department of Planning, Building, and Code Enforcement. This is the first of several audit reports on the Code Enforcement Division. We conducted this audit in accordance with generally accepted government auditing standards and limited our work to those areas specified in the Scope and Methodology section of this report.

The City Auditor's Office thanks the staff of the Code Enforcement Division and Building Division of the Department of Planning, Building, and Code Enforcement; the Bureau of Fire Prevention of the Fire Department; and the Billing Services Unit of the Treasury Division, Finance Department who gave their time, information, insight, and cooperation during the audit process.

BACKGROUND

The Code Enforcement Division's (Code Enforcement) program mission is to work in partnership with the people of San Jose, to provide citywide education and enforcement to promote and maintain a safe and desirable community consistent with health and safety regulations. Code Enforcement enforces various ordinances to promote the health, safety, and appearance of the City of San Jose. Specifically, Code Enforcement investigates and abates complaints involving land use (zoning), housing conditions, abandoned vehicles, signs, fences, and general public nuisances. It also monitors landfill and recycling sites to ensure their proper operation and adherence to federal, state, and local codes.

Budget And Staffing

In 1997-98, Code Enforcement's budget was \$6.2 million, which included \$5.4 million for personal services and about \$800,000 for non-personal services (including equipment). Code Enforcement receives its revenues from the General Fund, Federal Community Development Block Grant Funds, and various cost-recovery fees, such as Solid Waste Disposal Fees and Residential Occupancy Permit Fees.

In 1997-98, Code Enforcement was authorized 89 positions, which are organized into five service area groups and three additional groups: building code compliance, vehicle abatement, and solid waste issues. The five service area groups provide general code, multiple housing, and targeted program enforcement services. Code Enforcement's organization chart is shown on page three:

Through the Multiple Housing Program, Code Enforcement provides Health and Safety Code compliance inspection services on all multiple housing projects within the City. Multiple Housing units include all apartment buildings (three units or more), hotels and motels, guest houses, residential care facilities, residential service facilities, emergency residential shelters, and fraternities and sororities in San Jose. The program does not apply to single family rental properties, condominiums, and duplexes. Code Enforcement Inspectors routinely inspect all multiple housing buildings within the City on either a three- or six-year inspection cycle. Code Enforcement Inspectors also investigate complaints about substandard housing conditions in multiple family dwellings.

To pay for the Multiple Housing Program, Code Enforcement issues a Residential Occupancy Permit (permit) annually to all properties it inspects. The permit fee is currently set at \$23.60 per unit; \$18.70 per unit goes to recover Code Enforcement's cost and \$4.90 per unit goes to partially recover the Fire Department's cost of providing fire inspection services to multiple housing units. In 1997-98, Code Enforcement issued permits for 5,814 buildings with 59,160 units. These permit fees generated nearly \$1.4 million in revenues.

Major Accomplishments Related To The Program

In Appendix B, the Deputy Director of Code Enforcement informed us of major program accomplishments. Some of Code Enforcement's major accomplishments include the following:

- Changed the General Code Complaint Response Strategy;
- Developed a written Policy and Procedure Manual;
- Reorganized Code Enforcement Supervisor responsibilities creating five geographic service areas;
- Developed and conducted a customer service survey;
- Developed and conducted a "Multiple Housing Training Program" for property owners; and
- Reorganized the Multiple Housing Program.

SCOPE AND METHODOLOGY

The audit reviewed Residential Occupancy Permit fees assessed in 1997-98. The audit objectives were to assess the adequacy of internal controls to ensure that:

- All multiple housing units are identified;
- Residential Occupancy Permit fees are properly assessed; and
- Residential Occupancy Permit fees are collected.

In order to determine if all multiple housing units have been identified and included on the Multiple Housing Roster (Roster), we compared the number of apartments on the Roster to the number of apartment multiple housing units (three units or more) in the Sewer Service and Use database. Specifically, we hired an independent, computer-audit consultant to perform a computer matching of the Roster against the Sewer Service and Use database. The result of the computer matching was an exception report that identified properties in the Sewer Service and Use database that were not on the Roster. For some of these identified properties, we performed a physical observation to verify that the properties were indeed apartments. We also provided the exception report to Code Enforcement staff so that they could verify that these identified properties should be on the Roster.

We also reviewed the accuracy and completeness of the Fire Department's inspection list. Specifically, the consultant compared the number of multiple housing locations on the Fire Department inspection list to the number of multiple housing locations on both the Roster and in the Sewer Service and Use database. We provided the Fire Department staff with any identified properties so they too could verify that these properties should be on their inspection list.

To determine if the Residential Occupancy Permit fees are properly assessed, we reviewed Code Enforcement and the Fire Department's processes for assessing these costs to owners of multiple housing units.

To ensure that all permit fees were collected, we compared the amount of fees billed to the fees actually collected. In addition, we reviewed Code Enforcement's controls for following up on delinquent accounts.

We performed only limited testing of the various computer reports and databases we used during our audit. We did not review the general and specific application controls for the computer systems used in compiling the various computer reports and databases we reviewed.

FINDING I

BY IMPLEMENTING ADDITIONAL CONTROLS CODE ENFORCEMENT CAN ENSURE THAT ALL MULTIPLE HOUSING BUILDINGS AND UNITS ARE INSPECTED AND ISSUED RESIDENTIAL OCCUPANCY PERMITS AND GENERATE AS MUCH AS \$263,000 IN ADDITIONAL REVENUES

The Code Enforcement Division of the Planning Department (Code Enforcement) inspects multiple housing projects for compliance with the City of San Jose Housing Code requirements. Code Enforcement relies on a Multiple Housing Roster (Roster) to annually bill owners of multiple housing units \$23.60 per unit and to schedule routine inspections. Our audit revealed that Code Enforcement's Roster of 59,160 multiple housing units is not complete. Specifically, when we compared Code Enforcement's Roster to the City's Sewer Service and Use database we identified between 6,670 and 8,940 multiple housing units that should have been on Code Enforcement's Roster but were not. As a result, Code Enforcement has neither billed the owners of these multiple housing units between \$157,000 and \$211,000 per year nor conducted routine inspections of these units to ensure that they comply with State and local Housing Code requirements. Moreover, we identified 2,200 apartment units that are currently under construction in the City and susceptible to Code Enforcement not receiving information to include them on its Roster. If Code Enforcement billed the owners of these new units and the existing non-permitted units noted above, the City could realize between \$209,000 and \$263,000 in additional annual revenues. These additional revenues could pay for at least two new Code Enforcement Inspector positions for the Multiple Housing Program.

We also found that additional controls are needed to ensure that all multiple housing units are identified and permitted. Specifically, the Building Division needs to strengthen its controls for notifying Code Enforcement of newly constructed and occupied multiple housing units. In addition, Code Enforcement could improve its controls by periodically reconciling its Roster with other City databases. Further, the City needs to establish a clear definition of when a multiple housing unit is a

condominium as opposed to an apartment so that Code Enforcement will know if it should issue a Residential Occupancy Permit and conduct inspections. Finally, we recommend that the City Council consider modifying the Multiple Housing Program to include other types of rental properties.

Multiple Housing Program

The Code Enforcement Division of the Department of Planning, Building, and Code Enforcement (Code Enforcement) inspects multiple housing projects for compliance with the City’s Housing Code. A goal of the program is to ensure that the City’s multi-family rental housing stock is maintained in decent, safe, and sanitary condition in accordance with the requirements of the Housing Code. Code Enforcement issues Residential Occupancy Permits (permits) for all apartment buildings (three units or more), hotels and motels, guest houses, residential care facilities, residential service facilities, emergency residential shelters, and fraternities and sororities in San Jose. The program does not apply to single family rental properties, condominiums, and duplexes. In 1997-98, Code Enforcement assigned 13 Code Enforcement Inspectors to this program. Code Enforcement Inspectors routinely inspect all multiple housing buildings within the City on either a three- or six-year inspection cycle. Code Enforcement Inspectors also investigate complaints about substandard housing conditions in multiple family dwellings.

Multiple Housing Roster Identifies Permit Holders

Owners of multiple housing (or their agents) must obtain a permit before a building is occupied. The Municipal Code has established that any building, housing, or unit for which a permit is required, shall not be occupied until a permit has been issued. Code Enforcement maintains a Roster of known multiple housing buildings that have been issued permits. Code Enforcement uses the Roster for billing permit holders on an annual basis and conducting three- or six-year inspections.

In 1997-98, Code Enforcement’s Roster included 5,814 multiple housing buildings with 59,160 units, of which, 96 percent or 5,586 were apartment buildings with 51,178 units. The Roster includes the building address, building type, owner name and address, number of units, census tract, and permit number. Table 1 shows the breakdown of Code Enforcement’s Roster.

TABLE I
BREAKDOWN OF CODE ENFORCEMENT’S
MULTIPLE HOUSING ROSTER
BY BUILDING TYPE, AS OF MARCH 23, 1998

Building Type	Number of Buildings	Percent	Number of Units	Percent
Apartment	5,586	96.08	51,178	86.51
Residential Care Facility	9	0.15	82	0.14
Emergency Residential Shelter	6	0.10	72	0.12
Fraternity/Sorority	21	0.36	297	0.50
Guest House	108	1.86	1,130	1.91
Hotel/Motel	79	1.36	6,380	10.78
Residential Service Facility	5	0.09	21	0.04
Total	5,814	100.00%	59,160	100.00%

Source: Auditor analysis of Code Enforcement data.

Annual Permit Fees Required

In 1997-98, owners of multiple housing buildings are required to pay a permit fee of \$23.60 per unit for inspection services. The permit fee is set annually on a cost-recovery basis. This fee covers the cost of providing routine inspections, as well as all complaint-initiated inspection services by Multiple Housing Program staff. In addition, the fee also includes the Fire Department’s costs for performing multiple housing inspections mandated by the State Fire Marshal’s Office. The Fire Department’s share of the fee is \$4.90 per unit.

Sewer Service And Use Database
Has Information On Multiple Housing Units

The Billing Services Unit of the Treasury Division, Finance Department is responsible for billing and collecting Sewer Service and Use and Storm Drain charges. Annually, the Billing Services Unit assesses residential, commercial and government parcels sewer and storm drain charges. The unit maintains a Sewer Service and Use database for placing these charges on the property tax rolls. In 1997-98, the database had information on 214,717 records, which were assessed \$63.6 million in sewer service charges and \$12.7 million in storm drain charges. According to Department of Information Technology staff, the Sewer Service and Use database is the most accurate and complete database in the City. As of March 30, 1998, the Sewer Service and Use database indicated that there were 4,473 parcels with 60,312 multiple housing apartment units of three units or more.

Code Enforcement's Roster Is Not Accurate

Our review found that Code Enforcement's Roster is not accurate and complete. Specifically, when we compared the multiple housing apartment units in the Sewer Service and Use database to the units on the Roster, we found a significant number of units that were in the Sewer Service and Use database but not on the Roster. Initially, the number of exceptions was approximately 800 building locations with 16,500 units. However, upon further review we reduced the exception list to approximately 600 building locations and 10,500 units. Specifically, from our original exception list, we eliminated units which were on Code Enforcement's Roster but appeared to be exceptions because of address differences with the Sewer Service and Use database.

To verify the remaining 10,500 units that should be on Code Enforcement's Roster, we physically observed 26 sites with 100 units or more and 10 sites with less than 100. As a result of our physical observation, we concluded that the 6,112 units in the 36 sites we visited should be on Code Enforcement's Roster.

After we performed our physical observation, we provided Code Enforcement with our exception list of 10,500 units so they could verify that these units should, in fact, be on the Roster. As of July 10, 1998, Code Enforcement had confirmed that 48 apartment buildings with 6,670 units are valid exceptions and should be on the Roster. They also confirmed that about 1,560 units were either already on the Roster or were not eligible for the Program. As of July 10, 1998, Code Enforcement has approximately 2,270 units left to verify. The 2,270 units are part of buildings with less than 15 units. According to the Deputy Director of Code Enforcement, he believes the majority of the 2,270 units will either ultimately be found on the Roster or will not be eligible for the program.

As a result, as of July 10, 1998, the following summarizes the disposition of our initial exception list of 16,500 units and the status of the remaining exceptions of 8,940 units:

<u>Disposition of Initial 16,500 Exceptions</u>	<u>Number of Units</u>
Initial exceptions between the Sewer Service and Use database and Code Enforcement's Roster.	16,500
Units found to be on Code Enforcement's Roster under a different address from the Sewer Service and Use database.	<6,000>
Code Enforcement identified units already on the Roster or not eligible for the program.	<u><1,560></u>
Remaining exceptions between the Sewer Service and Use database and Code Enforcement's Roster.	<u>8,940</u>
<u>Status of Remaining Exceptions</u>	
Code Enforcement verified exceptions.	6,670
Units awaiting Code Enforcement verification.	<u>2,270</u>
TOTAL	<u>8,940</u>

Some examples of apartments we identified that were not on Code Enforcement's

Roster included the following:

1,100 Unit Complex On The Woods Drive, Built In 1981



332 Unit Complex On 610 Teatree Court, Built In 1988



144 Unit Complex At 2175 Aborn Road, Built In 1984



#1 We recommend that the Code Enforcement Division follow-up on multiple housing units without Residential Occupancy Permits that were identified from matching the Multiple Housing Roster to the Sewer Service and Use database beginning with complexes with more than 100 units. (Priority 1)

**Code Enforcement Has Not Billed
Owners Or Inspected Up To 8,940 Units**

Code Enforcement has neither billed the owners of the multiple housing units we identified between \$157,000 and \$211,000 per year nor conducted routine inspections of these units to ensure that they comply with state and local requirements. As stated earlier, the Residential Occupancy Permit fee is designed to partially recover the cost of Code Enforcement's and the San Jose Fire Department's (SJFD) programs to inspect multiple housing units. For 1997-98, the total fee is \$23.60 per unit; Code Enforcement's share is \$18.70 per unit and the Fire Department's share is \$4.90 per unit. Assuming that the fee is set at the same level, we estimate that the additional Residential Occupancy

Permit revenue generated from the non-permitted multiple housing units we identified would range from \$157,000 to \$211,000.

**Code Enforcement And The Building Division Need
Better Coordination To Ensure That Code Enforcement
Adds All Newly Constructed Multiple Housing
Buildings To Its Roster**

There is no internal procedure or policy between Code Enforcement and the Building Division to ensure that Code Enforcement will add all newly constructed multiple housing units to its Roster. Further, the internal control procedure that Code Enforcement should be able to rely upon to keep its Roster current has not proven effective. Specifically, Code Enforcement primarily relies upon the Building Division transmitting a Certificate of Completion to initiate adding multiple housing units to its Roster. However, our review revealed that Certificates of Completion are not all inclusive for all multiple housing units and not consistently prepared and/or transmitted to Code Enforcement.

According to the Chief Building Construction Inspector, the Building Division uses Certificates of Completion to notify Code Enforcement of new apartment buildings that have received final inspections. The Building Division only issues these Certificates of Completion for final inspections of apartments of three units or more. However, the Building Division does not issue Certificates of Completion for other types of buildings that should be on Code Enforcement's Roster. These buildings include hotels and motels, guest houses, residential care facilities, residential service facilities, emergency residential shelters, and fraternities and sororities.

**Code Enforcement May Not Have
Received All Certificates Of Completion**

Our review also found that the Building Division may not have properly transmitted to Code Enforcement all Certificates of Completion. According to Code Enforcement staff, they could not recall the Building Division sending them any Certificates of Completion for several years. We found that between October 1989 and

April 1997, the Building Division issued 39 Certificates of Completion for apartment projects. Of these 39 apartment projects, 16 projects did not appear on Code Enforcement's Roster. These 16 apartment projects were completed between 1994 and 1996 and had about 530 units. Included in these 16 apartments were a 92-unit apartment complex on Campbell Avenue and a 50-unit apartment complex on Evans Lane.

We also found that the Building Division's procedure for completing the Certificate of Completion form was handwritten and taped on the inside cover of a Certificate booklet that is no longer used.

The Building Division Did Not Issue Certificates Of Completion To All Apartments

The Building Division may not have issued Certificates of Completion for all newly built and occupied apartments. Specifically, between April 30, 1997 and May 10, 1998, the Building Division did not issue any Certificates of Completion. However, we identified a newly built 90-unit apartment complex, located at 360 Meridian Avenue, for which we could not locate a Certificate of Completion. A Building Division official told us that in some situations, a final Certificate of Completion will not be issued until an entire project is completed. This occurs even if the project involves several buildings of which some may, in fact, be completed and occupied.

Similarly, we visited the Los Esteros apartments to verify the issuance of Certificates of Completion for seven buildings with 176 units. Once on site, we discovered that an eighth building had been constructed without the Building Division having issued a Certificate of Completion. It is possible that the Building Division has similarly not issued Certificates of Completion for other apartment projects.

In our opinion, the use of Certificates of Completion is not an effective control to ensure that Code Enforcement adds all newly constructed multiple housing units to its Roster.

The Building Division Issues Certificates Of Occupancy For All Types Of Buildings That Should Be On Code Enforcement’s Roster

The Building Division does issue Certificates of Occupancy for all commercial projects, but it does not forward these types of certificates to Code Enforcement. As a result, the Building Division does not notify Code Enforcement when permit eligible buildings are constructed and occupied. Thus, it is possible that these types of structures are built without Code Enforcement’s knowledge. Since the Building Division issues Certificates of Occupancy to property owners for buildings that have received final inspections, the Building Division could improve information sharing with Code Enforcement by transmitting Certificates of Occupancy for all multiple housing buildings that have received final inspections.

#2 We recommend that the Code Enforcement Division and the Building Division develop internal procedures to establish and document the process for sharing information on newly constructed multiple housing buildings, including all apartments (three units or more), hotels and motels, guesthouses, residential care facilities, residential service facilities, emergency residential shelters, and fraternities and sororities in San Jose. (Priority 2)

#3 We recommend that the Building Division transmit the Certificates of Occupancy to Code Enforcement for newly constructed multiple housing buildings. (Priority 2)

Additional Revenues Can Result In More Staffing

We identified 2,200 apartment units that are currently under construction in the City. Given that Code Enforcement is not receiving sufficient information on new multiple housing construction, there is a risk that Code Enforcement will not be notified when these 2,200 units are completed.

If Code Enforcement billed the owners of the 2,200 units currently under construction and the existing 6,670 to 8,940 non-roster units we identified, the City could realize as much as \$209,000 to \$263,000 in additional annual revenues. This additional Residential Occupancy Permit fee revenue could provide funding for at least two additional Code Enforcement Inspector positions for the Multiple Housing Program.

A System Under Development May Help Identify Multiple Housing Projects

Department of Planning, Building, and Code Enforcement officials told us that an information system currently under development may help improve Code Enforcement's and the Building Division's coordination and construction activity information sharing. The Integrated Development Tracking System is expected to integrate various land-use tracking subsystems into one comprehensive system that will contain all permit, land use, and geographic data pertaining to a specific parcel. This "integrated" system will provide a way of tracking development projects from start to finish. However, project completion is not expected until December 2000.

Code Enforcement Could Improve Its Controls By Periodically Reconciling Its Multiple Housing Roster With Other City Databases

Our review found that Code Enforcement needs to improve the accuracy and completeness of its Roster. Specifically, Code Enforcement should periodically match its Roster against other City databases, such as the Sewer Service and Use database or the Fire Department R-1 Inspection List. Code Enforcement officials told us that while they

periodically update their Roster to reflect ownership changes, they have never reconciled their Roster with any other City databases. In our opinion, Code Enforcement needs to verify that their Roster is complete by periodically matching their Roster against the Sewer Service and Use database.

#4 We recommend that the Code Enforcement Division, on a regular and periodic basis, reconcile the Multiple Housing Roster with the City’s Sewer Service and Use database. (Priority 2)

**Code Enforcement Categorizes
Certain Apartments As Condominiums**

Code Enforcement has categorized certain apartment projects as condominiums that do not meet the legal definition of a condominium applicable under the Multiple Housing Program. Both State law regulating the operation of condominiums and the Municipal Code Chapter regulating conversion of structures to condominiums define condominiums as real property that consists of undivided interest in a portion of the property, together with a separate ownership interest in another portion of the property. The boundaries of the separate property interests are described on a recorded final subdivision map. Because both definitions require ownership of an undivided property interest in two or more persons, a condominium does not arise until at least one unit has been conveyed. There is no undivided interest, and therefore no condominium, as long as the developer/seller owns all of the units.

Before a developer/seller can sell a unit as a condominium, the developer must follow several steps:

- 1. obtain approval by the City of a tentative subdivision map for a condominium;
- 2. obtain approval by the City of a final subdivision map for a condominium;

3. record the approved final subdivision map for a condominium with the County; and
4. obtain a Public Report with the California Department of Real Estate.¹

Our review found that Code Enforcement has used a different definition of condominiums. Code Enforcement officials told us that they categorized an apartment project as condominiums if the developer filed only a tentative condominium map. This definition is neither consistent with State law, the Municipal Code, nor the development process as it applies to condominiums.

According to a Building Division official, during the development process a developer may apply to build condominiums, but by the time a building permit is issued, the developer may have decided to build apartments instead. In some instances, a developer may apply for a Planned Development Zoning depicting the proposed project as condominiums. The Building Division treats the project as a condominium throughout the development review and construction process. The Building Division issues building permits and performs in-progress construction inspections in accordance with the more stringent Uniform Building Code standards that apply to condominium projects. However, when the project is completed, the builder does not always offer the units for sale, but instead rents the units.

Further, the builder may choose not to complete the land use development process as it applies to condominiums. Specifically, the builder may not file the subdivision map which allows ownership of individual units, or not file the Public Report with the State Board of Real Estate.

¹ Obtaining a Public Report requires demonstrating that a number of other requirements have been satisfied, such as creating bylaws, a declaration of restrictions, and deeds to individual units, formation of a homeowners' association, and providing budgeting information.

For example, in 1996, the Building Division issued a Certificate of Completion for an apartment project that Catalonia Associates owned on Evans Lane. We reviewed independent information that confirmed that Catalonia Associates owned 50 apartment units (built in 1996) on Evans Lane. Santa Clara County Assessor maps showed that the parcel where the apartments were located did not include a condominium tract map. We informed Code Enforcement that the apartment building located on Evans Lane did not appear on their Roster. Code Enforcement researched the situation and informed us that they considered the buildings located on Evans Lane to be condominiums, not apartments, because in 1991 the City’s Planning Director approved, A Tentative Condominium Map for 50 Townhouse Units on Evans Lane. Consequently, Code Enforcement considered the units on Evans Lane to be condominiums even though three of the four criteria noted on page 18 were not satisfied.

Additional Clarification Is Needed On Condominium Issue

Code Enforcement needs to establish a clear definition of when a multiple housing unit is a condominium as opposed to an apartment. By so doing, Code Enforcement will know if it should add the building to its Roster.

#5 We recommend that Code Enforcement define condominiums and use that definition for program purposes. (Priority 2)

Other Multiple Housing Issues

In February 1993, the Department of Neighborhood Preservation requested the City Council to consider expanding the use of Residential Occupancy Permits to include condominium projects that are being rented as apartments. The Department had difficulty in differentiating between properties that operated identically from a land-use perspective solely on the basis that they had zoning approval to become condominiums and have been constructed to condominium standards. Specifically, the Department

asked the City Council to direct the City Attorney to draft an ordinance to include condominiums on the list of buildings requiring a Residential Occupancy Permit and to define condominiums as multiple dwellings. The Department also requested that the City Council direct the Administration to implement a program of placing condominium projects containing three or more units in one building, all unit deeds in the ownership of one investor, which are being rented or intended to be rented, into the Residential Occupancy Permit program at the time a Certificate of Completion is issued by the Building Division. However, the City Council did not adopt the Administration's recommendation.

In 1996, a Mayor's Focus Group identified absentee owners (landlords that do not actively manage the rental property) as one of the major causes of poorly maintained rental properties. Yet, the Multiple Housing Program addresses only a portion of rental properties (triplexes and larger). The major categories of rental properties the Multiple Housing Program does not cover include rental condominiums and single family rental properties (including duplexes and townhomes). Code Enforcement responds to code violations on these properties only on a complaint basis and does not inspect these properties on a pro-active basis. Thus, the City is not providing the renters of these properties the same level of service that it provides to renters of those units that the Multiple Housing Program does cover.

The number of rental properties not in the Multiple Housing Program may be significant. In 1993, Code Enforcement officials estimated that absentee landlords may rent up to 9,000 condominium units and that about 1,000 individuals or firms that own at least three rental units rent out a total of 5,000 units.

Code Enforcement does not maintain statistics on the number of complaints received from renters not covered by the Multiple Housing Program. Therefore, we could not support whether a need exists to provide additional inspection services to these dwellings. However, our review identified several potential problem rental

properties that are not under the Multiple Housing Program. For example, shown on page 22 is a 24-unit condominium complex that five individual parties own (one party owns 12 condominiums and four parties each own three condominiums). Code Enforcement had received complaints from renters of this property.



#6 We recommend that the City Council consider modifying the Multiple Housing Program to include other types of rental properties. (Priority 2)

CONCLUSION

Code Enforcement’s Roster of 59,160 multiple housing units is not complete. We identified between 6,670 and 8,940 multiple housing units that should have been on Code Enforcement’s Roster but were not. Moreover, we identified 2,200 apartment units that are currently under construction in the City and susceptible to Code Enforcement not receiving information to include them on its Roster. If Code Enforcement billed the owners of these new units and the existing 6,670 to 8,940 non-roster units, the City could realize between \$209,000 and \$263,000 in additional annual revenues. We also found that additional controls are needed to ensure that all multiple housing units are identified and permitted. In addition, we found that Code Enforcement needs to develop a clear

definition of what constitutes a condominium. Finally, we recommend that the City Council consider modifying the Multiple Housing Program to include other types of rental properties.

RECOMMENDATIONS

We recommend that the Code Enforcement Division,

Recommendation #1:

Follow-up on multiple housing units without Residential Occupancy Permits that were identified from matching the Multiple Housing Roster to the Sewer Service and Use database beginning with the complexes with more than 100 units. (Priority 1)

We recommend that the Code Enforcement Division and the Building Division,

Recommendation #2:

Develop internal procedures to establish and document the process for sharing information on newly constructed multiple housing buildings, including all apartments (three units or more), hotels and motels, guesthouses, residential care facilities, residential service facilities, emergency residential shelters, and fraternities and sororities in San Jose. (Priority 2)

We recommend that the Building Division,

Recommendation #3:

Transmit Certificates of Occupancy to Code Enforcement for newly constructed multiple housing buildings. (Priority 2)

We recommend that the Code Enforcement Division,

Recommendation #4:

On a regular and periodic basis, reconcile the Multiple Housing Roster with the City's Sewer Service and Use database. (Priority 2)

Recommendation #5:

Define condominiums and use that definition for program purposes. (Priority 2)

Furthermore, we recommend that the City Council,

Recommendation #6:

Consider modifying the Multiple Housing Program to include other types of rental properties. (Priority 2)

FINDING II

ADDITIONAL CONTROLS ARE NEEDED TO ENSURE THAT THE SAN JOSE FIRE DEPARTMENT INSPECTS ALL MULTIPLE HOUSING FACILITIES AND THAT OWNERS OF THESE FACILITIES ARE PROPERLY BILLED FOR FIRE SAFETY INSPECTIONS

The Office of the State Fire Marshal requires the San Jose Fire Department (SJFD) to inspect both permitted and non-permitted multiple housing facilities which are categorized as R-1 occupancies. The SJFD inspects for any condition that may cause a fire or contribute to its spread. Annually, each of the SJFD's 30 fire stations receives a list of SJFD non-permitted multiple housing facilities to schedule September through March inspections. The SJFD's share of the fee for performing SJFD non-permitted fire inspections of multiple unit housing facilities is \$4.90 per unit, which is part of a \$23.60 Residential Occupancy Permit fee the Code Enforcement Division of the Department of Planning, Building, and Code Enforcement (Code Enforcement) issues. The SJFD relies upon its fire inspection list to conduct SJFD non-permitted inspections. However, our review revealed that the SJFD's fire inspection list is incomplete. Specifically, when we compared the SJFD's fire inspection list to Code Enforcement's Multiple Housing Roster (Roster) and the City Sewer Service and Use database we found that:

- the SJFD is not inspecting up to 850 multiple unit housing facilities with about 10,800 units that it should be inspecting;
- about 315 multiple unit housing facilities with 3,400 units are paying \$4.90 per unit for SJFD inspection services they do not receive; and
- owners of about 2,500 multiple housing units are not paying for SJFD inspection services they receive.

A complete and accurate SJFD inspection list will help ensure that owners of multiple unit housing facilities properly pay for fire inspection services and the SJFD inspects all of the multiple unit housing facilities the State Fire Marshal requires.

State Fire Marshal Requirements

The Office of the State Fire Marshal requires local fire departments to inspect, as often as necessary, buildings and premises for any condition that may cause a fire or contribute to its spread. This requirement applies to a variety of building types, including buildings with assembly areas, schools, hospitals, nursing homes, residential care facilities, high-rise buildings, and multiple housing facilities. The latter facilities include all hotels, motels, lodging houses, congregate residences, and apartment houses and dwellings. According to a SJFD Battalion Chief, the Office of the State Fire Marshal has directed the City’s SJFD to annually inspect multiple housing buildings which are categorized as R-1 occupancies. The R-1 Inspection Program is divided into SJFD permitted and SJFD non-permitted facilities.

SJFD Inspects Multiple Housing Facilities Under Two Separate Inspection Programs

The Uniform Building Code (UBC) defines R-1 occupancies as hotels, apartments, and congregate residences (each accommodating more than 10 persons).² Under the first inspection program, a truck or engine company from each of the City’s 30 fire stations conducts inspections of R-1 occupancies (SJFD non-permitted facilities) from September through March. Annually, each fire station receives a list of SJFD non-permitted multiple unit housing facilities that should be inspected. In addition, each fire station receives a pre-printed Record of Inspection form for each facility to be inspected. The inspection team must complete and turn the form in after completing the inspection.

² The SJFD’s definition of R-1 occupancies should not be confused with the City’s R-1 designation for zoning purposes. Under the City’s zoning code, R-1 occupancies are defined as one-family dwellings.

A typical inspection of an R-1 non-permitted occupancy would consist of a truck or engine company checking for visible addresses, non-accumulation of weeds, protected gas meters, accessible electrical panels, fire protection equipment, adequate access for fire apparatuses, non-obstructed exiting for building occupants, and smoke detectors.

The UBC has established that in certain situations R-1 occupancies must obtain fire safety permits and have annual inspections. Under the second inspection program Bureau staff annually inspect R-1 occupancies (SJFD permitted facilities) with fire safety permits. The SJFD issues fire safety permits to multiple unit housing buildings that fall within two occupancy groupings:

Group 2: hotels, motels, and apartment houses with assembly areas for 50 or more occupants; have high fire or physical hazardous materials; or store moderate hazardous combustibles.

Group 6: high rise hotels, motels, and apartment houses. High rise buildings are more than 75 feet tall.

Bureau inspectors inspect R-1 permitted multiple housing facilities. A typical inspection would normally include the items covered under the line inspections of R-1 non-permitted facilities, plus checking hazardous material storage, reviewing Hazardous Material Business Plan, reviewing Evacuation Plan, conducting fire drills and alarm tests, verifying staff training, and verifying the operation of emergency systems (such as, fire pumps, sprinkler systems). According to SJFD officials, line companies participate in emergency pre-planning activities of permitted high-rise multiple housing facilities (R-1 permitted Group 6). Pre-planning activities involve familiarizing fire personnel with a building's layout, alarm systems, and exiting. The State Fire Marshal's Office does not mandate these activities, but SJFD conducts such activities for operational readiness purposes.

City Charges For Fire Inspections

The SJFD's partial cost for performing R-1 occupancy inspections for non-permitted facilities is included in the Residential Occupancy Permit fee that Code Enforcement administers. The permit fee is set annually by Code Enforcement on a cost-recovery basis.

In 1997-98, owners of multiple housing buildings were required to pay a permit fee of \$23.60 per unit for both Code Enforcement and SJFD inspection services. The SJFD's share of the fee is \$4.90 per unit.

In 1997-98, owners of R-1 SJFD permitted facilities paid \$277 for a fire safety permit, whereas, owners of Group 6 (High rise) buildings paid \$492 in permit fees.

SJFD's Multiple Housing Inspection List

The SJFD maintains a list of multiple housing buildings that are inspected as part of their non-permitted R-1 occupancy inspection program. The inspection list is divided by individual fire station, and includes the file number, street address, and business name. The inspection list also includes buildings that are located in unincorporated areas of the County.³ As of March 30, 1998, the SJFD inspection list had 4,680 multiple unit housing facilities that SJFD's 30 fire stations inspect.

Similarly, the SJFD also maintains a separate list of multiple housing buildings with fire safety permits. As of July 15, 1998, this list had 29 multiple housing facilities with fire safety permits (R-1 permitted facilities).

³ The SJFD is contracted by Santa Clara County to provide fire service to selected unincorporated areas within the City.

Code Enforcement Inspects The Same Multiple Housing Buildings

Code Enforcement also has an inspection program for multiple unit housing facilities. (See Finding I). The SJFD, through its R-1 Fire Inspection programs, inspects most of the same buildings Code Enforcement inspects. As part of its Multiple Housing Program, Code Enforcement issues Residential Occupancy Permits (permits) to owners of all apartment buildings (three units or more), hotels and motels, guest houses, residential care facilities, residential service facilities, emergency residential shelters, and fraternities and sororities in San Jose. The Code Enforcement Division provides health and safety code compliance inspection services on multiple housing buildings within the City.

The SJFD Is Not Inspecting 10,800 Units

The SJFD's multiple housing inspection list is not accurate and complete. Specifically, our review identified approximately 850 multiple housing locations with approximately 10,800 units that are on Code Enforcement's Roster and/or in the City's Sewer Service and Use Charge database but not on the SJFD's inspection list. We also identified billing problems associated with recovering the costs of fire inspection services. Specifically, some owners are billed for fire inspection services they do not receive and other owners receive fire inspection services for which they are not billed at all.

Our analysis indicates that a significant number of multiple housing sites may not have occupancy permits or be subject to SJFD inspections. The City Sewer Service and Use database is used for billing sewer customers and according to Information Technology Department staff it is the most accurate database in the City. When we compared the number of apartment sites in the Sewer Service and Use database to the SJFD's inspection list we found that the SJFD's inspection list does not include all eligible multiple unit housing facilities. We also compared the SJFD's list of R-1 SJFD non-permitted sites to Code Enforcement's Roster and found approximately 850 multiple

housing locations with approximately 10,800 units that are on Code

Enforcement's Roster and/or in the City's Sewer Service and Use database but are not on the SJFD's inspection list. Of these 850 locations about 315 locations with 3,400 units are on Code Enforcement's Roster but not on the SJFD's list of R-1 SJFD non-permitted inspection sites. As a result, the SJFD is not performing mandated fire safety inspections on all multiple housing buildings that meet the conditions for the R-1 inspection program.

We provided a list of these multiple housing locations to the SJFD to verify that these sites should, in fact, be on their inspection list.

#7 We recommend that the SJFD add to its fire inspection list those multiple unit housing facilities that were identified from matching the fire inspection list against Code Enforcement's Multiple Housing Roster and the City's Sewer Service and Use database. (Priority 1)

Billing Problems With SJFD Inspection Services

Our review identified billing problems associated with recovering the cost of fire inspection services provided to multiple housing locations. Specifically, we identified the following problems:

- Approximately 3,400 units are on the Code Enforcement Division's Roster but are not on the SJFD's inspection list. The owners of these properties pay \$4.90 per unit for fire inspection services they do not receive and
- Approximately 2,500 units are on the R-1 SJFD non-permitted inspection list but are not on Code Enforcement's Roster. The owners of these units receive fire inspection services for which they do not pay.

#8 We recommend that the SJFD and the Code Enforcement Division of the Department of Planning, Building, and Code Enforcement develop procedures to ensure that owners of multiple unit housing facilities are properly billed for the fire inspection services they receive. (Priority 2)

SJFD Does Not Receive Confirmation Of Newly Constructed Multiple Unit Housing Facilities

Our review found that the SJFD maintains its own database of units they should be inspecting. In addition, the SJFD is involved in the planning and inspecting of new multiple housing building construction projects. According to a SJFD Battalion Chief, the SJFD reviews building plans for new R-1 occupancy buildings and conducts inspections of these buildings upon completion. Specifically, the Municipal Code requires that the Bureau review all building plans, excluding single family and duplex residences, submitted for building permits. The Bureau reviews these plans for conformance with State and local laws relating to the prevention of fire, the storage of hazardous materials, protection of life and property against fire, explosion, exposure to hazardous materials, and panic.

However, our review found that additional controls are needed to ensure that the SJFD receives timely, accurate, and reliable information on newly constructed multiple housing buildings. Similar to Code Enforcement (see Finding I), there is no internal policy or procedure between the SJFD and the Building Division for sharing information on newly completed multiple housing buildings. Consequently, the SJFD does not receive any formal notification of newly completed multiple housing buildings.

#9 We recommend that the SJFD and the Building Division of the Department of Planning, Building, and Code Enforcement develop internal procedures to establish and document the process for sharing information on newly constructed multiple unit housing facilities. (Priority 2)

#10 We recommend that the Building Division of the Department of Planning, Building, and Code Enforcement use Certificates of Occupancy to notify the SJFD of newly constructed multiple housing buildings. (Priority 2)

**SJFD Has Not Reconciled Its Inspection List
Against Code Enforcement's Roster And/Or
The City's Sewer Service And Use Database**

Our review also found that the SJFD needs to improve the accuracy and completeness of its inspection list by periodically matching its list against other City databases, such as Code Enforcement's Roster and the City's Sewer Service and Use database. SJFD officials told us that they have never reconciled their inspection list with any other City databases, such as the Sewer Service and Use database and Code Enforcement's Roster. It should be noted that in accordance with Recommendation #4 (Finding I), Code Enforcement will reconcile its Roster to the Sewer Service and Use database. In our opinion, once this occurs, SJFD should reconcile its inspection list to Code Enforcement's Roster. Until Recommendation #4 is implemented, SJFD should reconcile its inspection list to both databases.

#11 We recommend that when Recommendation #4 (Finding I) is implemented, SJFD periodically compare its inspection list against Code Enforcement's Roster and add any exceptions to its inspection list. Until Recommendation #4 is implemented, SJFD should reconcile its inspection list to Code Enforcement's Roster and the City's Sewer Service and Use database. (Priority 2)

CONCLUSION

Our review revealed that the SJFD's inspection list is incomplete. We found that the SJFD is not inspecting about 850 multiple unit housing facilities with about 10,800 units that it should be inspecting. We also found that about 315 multiple unit housing facilities with 3,400 units are paying \$4.90 per unit for SJFD inspection services they do not receive and that owners of about 2,500 multiple housing units are not paying for the SJFD inspection services they receive. A complete and accurate SJFD inspection list would help ensure that owners of multiple unit housing facilities properly pay for fire inspection services and the SJFD inspects all of the multiple unit housing facilities the State Fire Marshal requires.

RECOMMENDATIONS

We recommend that the SJFD,

Recommendation #7:

Add to its fire inspection list those multiple unit housing facilities that were identified from matching the fire inspection list against Code Enforcement's Multiple Housing Roster and the City's Sewer Service and Use database. (Priority 1)

We recommend that the SJFD and the Code Enforcement Division of the Department of Planning, Building, and Code Enforcement,

Recommendation #8:

Develop procedures to ensure that owners of multiple unit housing facilities are properly billed for the fire inspection services they receive. (Priority 2)

We recommend that the SJFD and the Building Division of the Department of Planning, Building, and Code Enforcement,

Recommendation #9:

Develop internal procedures to establish and document the process for sharing information on newly constructed multiple unit housing facilities. (Priority 2)

We recommend that the Building Division of the Department of Planning, Building, and Code Enforcement,

Recommendation #10:

Use Certificates of Occupancy to notify the SJFD of newly constructed multiple housing buildings. (Priority 2)

We recommend that the SJFD,

Recommendation #11:

Periodically compare its inspection list against Code Enforcement's Roster and add any exceptions to its inspection list when Recommendation #4 (Finding I) is implemented. Until Recommendation #4 is implemented, SJFD should reconcile its inspection list to Code Enforcement's Roster and the City's Sewer Service and Use database. (Priority 2)